

## TITLE 329 SOLID WASTE MANAGEMENT BOARD

### DRAFT RULE AS PROPOSED FOR PRELIMINARY ADOPTION

#05-296 (SWMB)

#### DIGEST

This rulemaking proposes amendments to rules at 329 IAC 10 concerning unrecognizable, crushed construction/demolition waste and changes to permitting requirements mandated under Senate Enrolled Act 279-2005. Amendments proposed to Article 10 also relate to New Source Performance Standards for the purpose of maintaining consistency with state and federal air pollution regulations; and to clarify municipal solid waste landfill (MSWLF) owner/operator responsibilities for closure and post closure cost estimates for gas extraction systems. Effective 30 days after filing with the Indiana Register.

#### HISTORY

First Notice of Comment Period: November 1, 2005, Indiana Register (29 IR 693).

Continuation of First Notice of Comment Period: January 1, 2006, Indiana Register (29 IR 1395).

Second Notice of Comment Period: April 1, 2006, Indiana Register (29 IR 2391).

Notice of First Hearing: April 1, 2006, Indiana Register (29 IR 2391).

Date of First Hearing: July 18, 2006.

**329 IAC 10-9-3**

**329 IAC 10-11-2.1**

**329 IAC 10-13-5**

**329 IAC 10-20-25**

**329 IAC 10-22-2**

**329 IAC 10-23-3**

SECTION 1. 329 IAC 10-9-3 IS AMENDED TO READ AS FOLLOWS:

#### **329 IAC 10-9-3 Construction/demolition site waste criteria**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 3. (a) A construction/demolition site may accept **only easily recognizable** construction/demolition waste as defined in 329 IAC 10-2-37. **The construction/demolition waste must not be crushed or ground prior to disposal.** Other items are prohibited, except as specified in subsection (b).

(b) Specific, written approval by the commissioner for disposal of other items may be requested. ~~Such~~ Approvals will be granted only if the other items to be disposed **of**:

- (1) are incidental to the construction/demolition site;
- (2) are of a similar type and size to the items allowed by subsection (a); and
- (3) will not create a greater threat to the environment than the items allowed by subsection (a).

*(Solid Waste Management Board; 329 IAC 10-9-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1805; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 2. 329 IAC 10-11-2.1 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 10-11-2.1 Permit application requirements; general**

**Authority:** IC 13-14-8-7; IC 13-15-2-1

**Affected:** IC 4-21.5-3-5; IC 13-14-11-3; IC 13-19-4; IC 13-20-21; IC 36-7-4; IC 36-9-30

Sec. 2.1. (a) An application for:

- (1) any solid waste land disposal facility permit, including renewals; or ~~for~~
- (2) a modification to a solid waste land disposal facility permit, excluding insignificant modifications;

must be submitted to the commissioner on permit application forms provided by the commissioner in a format specified by the commissioner. All narrative, plans, and other support documentation accompanying the application must also be submitted in a format specified by the commissioner.

(b) A complete application must include all of the following information:

(1) The ~~name names~~ and ~~address addresses~~ of ~~the following~~:

(A) The applicant.

~~(2) The name and address of~~ (B) The solid waste land disposal facility site.

~~(3) The name and address of~~ (C) The solid waste land disposal facility owner, operator, or permittee if different from the real property owner.

~~(4) The names and addresses of~~ (D) The members of the board of county commissioners of a county that is affected by the permit application.

~~(5) The names and addresses of~~ (E) The:

(i) mayors of any cities; ~~that are affected by the permit application. and~~

~~(6) The names and addresses of the~~ (ii) presidents of town councils of any towns;

that are affected by the permit application.

~~(7)~~ (2) The legal description as defined in 329 IAC 10-2-104 for the following:

(A) The solid waste land disposal facility boundary.

(B) If applicable, the solid waste boundary defining the area where the solid waste is to be deposited.

~~(C)~~ Sufficient documentation must be provided to verify that the waste deposition area is located within the facility boundaries. ~~The~~ documentation must include a map of the legal

description for these areas certified by a registered land surveyor.

~~(8)~~ **(3)** Solid waste land disposal facility information, including the following:

(A) A description of the type of operation.

(B) The planned or remaining life of the solid waste land disposal facility in years.

(C) The expected amount of waste to be received in:

(i) tons; ~~per operating day~~ or

(ii) cubic yards;

per operating day.

(D) The type of waste to be received.

~~(9)~~ **(4)** Signatures and certification statements in compliance with section 3 of this rule.

~~(10)~~ **(5)** Disclosure of all good character information as described in IC 13-19-4 unless the application is for a **renewal or** minor modification.

(c) Five (5) copies of the completed application and all supporting documentation must be submitted to the commissioner as follows:

(1) Sent by registered mail, certified mail, **or** private carrier or delivered in person.

(2) In addition to the paper copies, a copy of the completed application and all supporting documentation may be submitted by electronic submission, the type and format of which will be prescribed by the commissioner. The commissioner may make a determination that only an electronic copy is needed.

(3) Plans and documentation accompanying the application shall be submitted as required in 329 IAC 10-15-1(c).

(d) Confidential treatment of information may be requested in accordance with 329 IAC 6.1 for all or a portion of the permit application and supporting documentation.

(e) All corporations must submit a copy of the certificate of existence signed by the secretary of state.

(f) Fees must be submitted with the application in accordance with IC 13-20-21. *(Solid Waste Management Board; 329 IAC 10-11-2.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3788; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1801, eff Apr 1, 2004)*

### SECTION 3. 329 IAC 10-13-5 IS AMENDED TO READ AS FOLLOWS:

#### **329 IAC 10-13-5 Transferability of permits; change of ownership interest**

**Authority:** IC 13-14-8-7; IC 13-15; IC 13-19-3; IC 13-19-4-10

**Affected:** IC 13-14-8; IC 13-15-7; IC 13-19-4; IC 13-30-6; IC 36-9-30-35

Sec. 5. (a) A permit may be transferred to ~~a third~~ **another** person by the permittee, without the need for a new permit or modification or revocation of the existing permit being required if:

———~~(1)~~ the permittee notifies the commissioner of the proposed transfer at least sixty (60)

days before the proposed date of transfer on forms provided by the commissioner.

**(b) Along with the notification form the permittee must provide:**

**(1) a disclosure statement meeting the requirements of IC 13-19-4-2(1) or IC 12-19-4-2(2) executed by the transferee and each person who is a responsible party with respect to the transferee, unless IC 13-19-4-2 does not apply under the provisions of IC 13-19-4-1(b).**

~~(2) a written contract between the permittee and the third person agreement containing a specific date of transfer of permit responsibility is submitted to the commissioner.~~

~~(3) the transferee has not been convicted under IC 13-30-6 or IC 36-9-30-35;~~ **proof of financial responsibility of the transferee as provided in 329 IAC 10-39, if required by the commissioner; and**

~~(4) commissioner has not revoked under IC 13-15-7 a permit to the transferee that was issued under:~~

~~\_\_\_\_\_ (A) this article;~~

~~\_\_\_\_\_ (B) 329 IAC 1.5, which was repealed in 1989; or~~

~~\_\_\_\_\_ (C) 329 IAC 2, which was repealed in 1996;~~

**proof that the transferee is, or will be, the owner of the real property on which the facility is located, or proof that the property is, or will be, leased to the transferee.**

~~\_\_\_\_\_ (5) the third person is, at the time of the application or permit decision, in compliance with the Environmental Protection Acts and rules promulgated thereunder and does not have a history of repeated violations of the Acts or rules or material permit conditions that evidence an inability or unwillingness to comply with requirements of this article or a facility permit;~~

**(c) A permit may not be transferred if the transferee has been convicted under IC 13-30-6 or IC 36-9-30-35 or has had a permit to operate under this article, or previous articles, 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, revoked by the commissioner under IC 13-15-7.**

~~(6) the transferee provides proof to the department of financial responsibility under 329 IAC 10-39; and~~

~~\_\_\_\_\_ (7) the transferee provides proof to the department that the transferee is, or will be, the owner of the real property or provides proof of the applicant's agreement regarding the leasing of the property.~~

~~(b)~~ **(d)** The transfer will be effective on the specific date of transfer provided by the permittee unless the commissioner notifies the permittee and the transferee that the transfer will be denied **under IC 13-19-4-5, IC 13-19-4-6 and IC 13-19-4-7.**

~~(c)~~ **(e)** Notwithstanding subsection ~~(a)(1);~~ **the transfer of a permit,** a variance granted under IC 13-14-8 must not be transferred to another person without independent proof of undue hardship or burden by the person seeking transfer **without independent proof of undue hardship or burden by the transferee.**

**(f) Subject to IC 13-19-4-8(a), if there is a change of at least fifty percent (50%) ownership control of an entity, but less than a change of the entire ownership control of an entity, that holds a permit described in IC 13-15-1-3, then the entity must, not later than thirty (30) days after the change of ownership control is completed, submit to the department the disclosure statement required by IC 13-19-4-3(a) and IC 13-19-4-3(b).**

**(g) The requirement of subsection (f) applies to the transfer of a permit described in IC 13-19-4-1(b).**

**(h) Upon receipt of the disclosure statement required under subsection (f), the commissioner shall follow the procedures and requirements of IC 13-19-4-8(f) and if applicable, IC 13-19-4-8(g).** *(Solid Waste Management Board; 329 IAC 10-13-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1815; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2758; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1806, eff Apr 1, 2004)*

SECTION 4. 329 IAC 10-20-25 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 10-20-25 Air criteria**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 25. (a) The owner, operator, or permittee of ~~MSWLFs~~ **an MSWLF** shall **do the following:**

**(1) Ensure that the an MSWLF does not violate any applicable requirements developed under Indiana's state implementation plan (SIP) approved or promulgated by the United States Environmental Protection Agency administrator under Section 110 of the Clean Air Act, 42 U.S.C. 7401 et seq., as amended November 15, 1990.**

**(2) Comply with the new source performance standards and emission guidelines at 326 IAC 12-1-1(b)(1) (40 CFR Part 60 Subpart WWW), as applicable.**

~~(b) The owner, operator, or permittee of an MSWLF shall~~ **(3) Not cause or allow the storage, containment, processing, or disposal of solid waste in a manner that creates a threat to human health or the environment, including the creation of a fire hazard or air pollution.**

*(Solid Waste Management Board; 329 IAC 10-20-25; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1853; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3834; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 5. 329 IAC 10-22-2 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 10-22-2 Closure plan**

**Authority:** IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

**Affected:** IC 13-30-2; IC 36-9-30

Sec. 2. (a) The owner, operator, or permittee of an MSWLF shall prepare a written closure plan. The plan must be **as follows**:

(1) Submitted with the permit application in accordance with 329 IAC 10-11. ~~and be~~

(2) Approved by the commissioner as part of the permit.

The approved closure plan becomes a condition of the permit upon approval.

(b) The owner, operator, or permittee of an MSWLF permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, that:

(1) closed on or before January 1, 1998, must close under the MSWLF's existing approved closure plans; or

(2) intend to close after January 1, 1998, must:

(A) revise closure plans to meet the requirements of subsection (c); and

(B) submit the revised plans to the commissioner for approval within six (6) months after April 13, 1996, or the anniversary date of the approved closure plans, whichever is earlier.

(c) The closure plan must identify the steps necessary to completely close the MSWLF at any point during its active life in accordance with section 1 of this rule. The plan must be certified by a registered professional engineer. The closure plan must include the following:

(1) A description of the steps that will be used to partially close, if applicable, and finally close the MSWLF in accordance with section 1 of this rule.

(2) A listing of labor, materials, and testing necessary to close the MSWLF.

(3) An estimate of the expected year of closure and a schedule for final closure. The schedule must include the following:

(A) The total time required to close the MSWLF.

(B) The time required for completion of intervening closure activities.

(4) An estimate of the maximum inventory of wastes that will be on site over the active life of the MSWLF.

(5) An estimate of the cost per acre of providing final cover and vegetation. ~~Such~~ **The** cost must reflect cost necessary to close the MSWLF by the third party as required by the approved plan, but must not be less than **the following**:

(A) Twenty-one thousand dollars (\$21,000) per acre to close MSWLF units that are constructed with only a soil liner. ~~and~~

(B) Seventy-eight thousand seven hundred fifty dollars (\$78,750) per acre for MSWLF units that are constructed with a composite bottom liner system.

For an application for a new MSWLF or a major modification submitted on or after April 1, 2005, the owner, operator, or permittee must adjust the minimum closure costs provided in clauses (A) and (B) for inflation, as described in 329 IAC 10-39-2(c)(1).

(6) For new MSWLFs and major modifications, the closure cost estimate must include a ten percent (10%) contingency cost on the total closure cost of the MSWLF.

(7) If the owner, operator, or permittee of an MSWLF utilizes the incremental closure standard, as contained in 329 IAC 10-39-2(b)(3)(B), then for each yearly period following the beginning of operation of the MSWLF, the closure plan must **do the following**:

- (A) Specify the maximum area of the MSWLF into which municipal solid waste will have been deposited through that year of the MSWLF's life. ~~and must~~
  - (B) Delineate ~~such the~~ areas on the copy of the facility's final contour map. ~~The closure plan must~~
  - (C) List closure cost estimates for each year of the anticipated life of the facility equal to the costs specified by subdivisions (5) and (6).
- (8) An estimate of the yearly maintenance costs for a dike or dikes required under 329 IAC 10-16-2.
- (9) An estimate of the installation costs for a landfill gas control system must be submitted, if the facility has:**
- (A) complied with 329 IAC 10-20-25(b); or**
  - (B) obtained a waiver under 329 IAC 10-22-6(c).**
- ~~(9)~~ (10) A construction quality assurance and construction quality control plan for the construction and installation of the final cover system as required by this rule.
- ~~(10)~~ (11) A description of the final cover, designed in accordance with this rule, and the methods and procedures to be used to install the cover.
- ~~(11)~~ (12) An estimate of the largest area of the MSWLF ever requiring a final cover as required under this rule at any time during the active life.
- ~~(12)~~ (13) If property is used to fulfill or reduce the cost of closure funding, the property must not be sold, relinquished, or used for any other purpose. If the property is proposed to be sold, relinquished, or used for any other purpose, the owner, operator, or permittee shall complete the following requirements:
- (A) The closure plan must be:
    - (i) updated under this section; and
    - (ii) submitted to the commissioner.
  - (B) The closure financial responsibility must be:
    - (i) updated under 329 IAC 10-39; and
    - (ii) submitted to the commissioner.
  - (C) The owner, operator, or permittee shall receive approval from the commissioner for the requirements under clauses (A) and (B) **prior to before** selling, relinquishing, or using the property for any other purpose.

*(Solid Waste Management Board; 329 IAC 10-22-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1882; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3859; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1855, eff Apr 1, 2004)*

#### SECTION 6. 329 IAC 10-23-3 IS AMENDED TO READ AS FOLLOWS:

##### **329 IAC 10-23-3 Post-closure plan**

**Authority:** IC 13-14-8-7; IC 13-15; IC 13-19-3

**Affected:** IC 13-20; IC 36-9-30

Sec. 3. (a) The owner, operator, or permittee of an MSWLF shall have a written post-

closure plan. The post-closure plan must be **as follows:**

- (1) Submitted with the permit application in accordance with 329 IAC 10-11. ~~and be~~
- (2) Approved by the commissioner.

The approved post-closure plan must become a condition of the permit. If the permit expires or is revoked, the post-closure plan remains effective and enforceable during the post-closure period. If the plan is determined to be unacceptable, the commissioner shall identify the items needed to make it complete.

(b) The owner, operator, or permittee of existing MSWLFs shall revise and submit post-closure plans meeting the requirements of this rule within six (6) months after April 13, 1996, or the anniversary date of the approved post-closure plan, whichever is earlier.

(c) The post-closure plan must identify the activities that will be carried on after closure under section 2 of this rule and must include at least the following:

- (1) A description of the planned:

(A) ground water monitoring activities; and ~~the frequency at which they will be performed.~~

~~(2) A description of the planned~~ (B) maintenance activities;  
and the frequency at which they will be performed.

~~(3) (2)~~ (2) A description of the planned uses of the property during the post-closure period.  
Post-closure use of the property must not disturb the:

(A) integrity of the final cover, liner, or any other component of the containment system; or ~~the~~

(B) function of the monitoring system;

unless necessary to comply with this article. The commissioner may approve other disturbances if the owner, operator, or permittee demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

~~(4) (3)~~ (3) The name, address, and telephone number of the owner, operator, or permittee with responsibility for maintaining the site after closure whom the commissioner may contact about the MSWLF during the post-closure period.

~~(5) (4)~~ (4) A post-closure cost estimate in accordance with 329 IAC 10-39. Post-closure costs must be calculated based on the cost necessary for the work to be performed by a third party for thirty (30) years of the post-closure period and must include the following:

(A) For post-closure maintenance of final cover and vegetation, the amount per acre must be ten percent (10%) of the cost calculated under 329 IAC 10-22-2(c)(5) multiplied by the total acreage of the site permitted for filling.

(B) At a minimum, the amount of funds necessary for leachate treatment and disposal must be based on the following gallons per acre per day over the thirty (30) year post-closure period:

|      | Gallons Per Acre<br>Per Day (GPAD) |
|------|------------------------------------|
| Year |                                    |



|       |     |
|-------|-----|
| 1-5   | 150 |
| 6-10  | 80  |
| 11-15 | 50  |
| 16-20 | 30  |
| 21-25 | 20  |
| 26-30 | 10  |

The commissioner may increase or decrease this amount of funding if it is determined that, based on a site-specific basis, more or less funds are necessary. A partial closure for leachate generation rate, based on the rates described in this clause, may be granted if the owner, operator, or permittee of an MSWLF provides actual leachate generation rate data of an area for at least a two (2) years duration after final cover is installed and certified.

(C) At a minimum, the amount of funds necessary to provide for post-closure activities must include funds for the following:

(i) Ground water monitoring and well maintenance, including piezometers when applicable.

(ii) Methane monitoring and maintenance.

**(iii) Landfill gas emissions extraction system operation and maintenance.**

~~(iii)~~ **(iv) Maintenance of the following:**

**(AA) The** drainage and erosion control system.

~~(iv)~~ **Maintenance of (BB) The** leachate collection system.

~~(v)~~ **Maintenance of (CC) Access** control.

~~(vi)~~ **(v) Control** of vegetation.

~~(vii)~~ **(vi) Maintenance** of the dike or dikes if required under 329 IAC 10-16-2.

(6) The post-closure cost estimate must include a twenty-five percent (25%) contingency cost based on total post-closure cost.

(7) If the property is used to fulfill or reduce the cost of post-closure funding, the property must not be sold, relinquished, or used for any other purpose. If the property is proposed to be sold, relinquished, or used for any other purpose, the owner, operator, or permittee shall complete the following requirements:

(A) The post-closure plan must be:

**(i)** updated under this section; and

**(ii)** submitted to the commissioner.

(B) The post-closure financial responsibility must be:

**(i)** updated under 329 IAC 10-39; and

**(ii)** submitted to the commissioner.

(C) The owner, operator, or permittee shall receive approval from the commissioner for the requirements under clauses (A) and (B) **prior to before** selling, relinquishing, or using the property for any other purpose.

(d) Proposed changes to the approved post-closure plans may be submitted to the commissioner during the post-closure period. The commissioner shall provide notification that the modification is not acceptable within sixty (60) days of receiving the modification request. If the owner or operator does not receive notification from the commissioner within sixty (60) days, the post-closure plan modifications may be installed in accordance with documentation provided to the commissioner. *(Solid Waste Management Board; 329 IAC 10-23-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1887; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2816; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3864; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1859, eff Apr 1, 2004)*